

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-01-PA-331
)	
Morgan Tower Inc.)	NAL/Acct. No. 200232400004
Cinnaminson, New Jersey)	
)	FRN #. 0006-3665-04

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 19, 2002

By the District Director, Philadelphia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Morgan Tower Inc. (“Morgan”) has apparently violated Section 17.21(a) of the Commission’s Rules (“the “Rules”)¹ by failing to paint and light an antenna structure. We conclude that Morgan is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On November 29, 2001, Agent Trenton Williams of the Philadelphia Office performed a routine inspection of, the antenna structure, Antenna Structure Registration (“ASR”) number 1060096, located on the roof of the building at 7200 Stenton Avenue in Philadelphia. Mr. Williams noted that the antenna structure was not painted or lighted as required.

3. On January 10, 2002, the Philadelphia Office issued a Notice of Violation (“NOV”) to Mr. Leonard Stevens, d.b.a. Morgan Tower Inc. for violation of Section 17.21(a) of the Rules. Morgan was given thirty (30) days from the date of the notice in which to respond with an explanation of what steps had been taken to correct the deficiencies and a timetable for completing corrective actions.

4. By letter dated January 28, 2001, Joseph Maloney of Tower Economics Company, Inc. submitted a response to the Philadelphia Office on behalf of Morgan. Mr. Maloney acknowledged receipt of the NOV sent to Morgan, and stated that the FAA authorized a waiver of the painting and lighting requirements, however Mr. Maloney was unable to provide evidence that such a waiver was granted. To date, the Philadelphia Office has not received any evidence that the waiver was ever granted.

¹ 47 C.F.R. § 17.21(a).

III. DISCUSSION

5. Section 17.21(a) of the Rules specifies that antenna structures shall be painted and lighted when they exceed 60.96 meters (200 feet) in height above ground or they require special aeronautical study. Agent Williams has determined, based on information contained in the FCC database for Antenna Structure Registration number 1060096, that the overall height above ground of Morgan’s antenna structure is 88.3 meters (289.7 feet).

6. Based on the evidence before us, we find that Morgan Tower Inc. has willfully² violated Section 17.21(a) of the Rules. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”)³, sets the base forfeiture amount at ten thousand dollars (\$10,000) for failure to comply with prescribed lighting and marking specifications. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934⁴ (“Act”), as amended, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,⁵ Morgan Tower Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 17.21(a) of the Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Morgan Tower Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

Federal Communications Commission

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232400004 and FRN # 0006-3665-04.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200232400004.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under and installment plan should be sent to: Chief, Revenue and receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁶

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, Return Receipt Requested, to Morgan Tower Inc. 700 Route 130 N. Suite. 204, Cinnaminson, New Jersey 08077.

FEDERAL COMMUNICATIONS COMMISSION

John E. Rahtes
District Director
Philadelphia Office

⁶ See 47 C.F.R. § 1.1914